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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 284.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

JOHN V. FARWELL, CHARLES B. FARWELL, ARIEL K. HARMON, COPARTNERS AS JOHN V. FARWELL & COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED JUNE 2, 1886.

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1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, district judge of the United States for the northern district of Illinois, on Monday, the first day of June, in the adjourned May term of said court, in the year of our Lord one thousand eight hundred and eighty-five, and of our Independence the one hundred and ninth year.

WM. H. BRADLEY, *Clerk.*

JOHN V. FARWELL, CHARLES B. FARWELL, and John K. Harmon, copartners as John V. Farwell & Co.,
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the sixteenth day of August, 1884, came the plaintiffs, by their attorney, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, a præcipe and bond for costs in said above-entitled cause, which said præcipe and bond are respectively in the words and figures following, to wit:

2 *Præcipe.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

United States circuit court, northern dis't of Ill., October term, A. D. 1884.

JOHN V. FARWELL, CHARLES B. FARWELL, and John K. Harmon, copartners as John V. Farwell & Co.,
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit. Damages, $1,000.

The clerk of said court will issue a summons in the above-entitled cause to said defendant in a plea of trespass on the case upon promises, to the damage of said plaintiffs in the sum of one thousand dollars, and direct the same to the marshal of the said district to execute, and make it returnable to the October term of said court, A. D. 1884.

PERCY L. SHUMAN,
Plaintiffs' Attorney.

To WM. H. BRADLEY, Esq., *Clerk.*

CHICAGO, *Aug.* 12, 1884.

(Endorsed:) Filed Aug. 16, 1884. Wm. H. Bradley, clerk.
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3 *Bond for costs.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, October term, A. D. 1884.

JOHN V. FARWELL ET AL.
vs.
JESSE SPALDING, COLLECTOR, &C. } In assumpsit.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court, and in default of payment by the plaintiffs of any costs ordered or adjudged to be paid by them, I hereby agree and stipulate that execution may issue against my property for any costs taxed against the plaintiffs.

Dated this fifteenth day of August, A. D. 1884.

P. L. SHUMAN.

(Endorsed:) Filed Aug. 16, A. D. 1884. Wm. H. Bradley, clerk.

On the same day, to wit, on the sixteenth day of August, 1884, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

4 CIRCUIT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Jesse Spalding, collector of customs, &c., if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of October next, to answer unto John V. Farwell et al. of a plea of trespass on the case upon promises, to their damage, as it is alleged, of one thousand dollars, and have you then and there this writ.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 16th day of August, in the year of our Lord one thousand eight hundred and eighty-four, and of our Independence the 109th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Marshal's return.

I have served the within writ by reading the same to and within the presence and hearing of Jesse Spalding, collector of customs, &c., therein named, on the 21st day of August, 1884.

A. M. JONES,
U. S. Marshal,
By R. D. SHERMAN,
Deputy.

(Endorsed:) Filed Sept. 8, A. D. 1884. Wm. H. Bradley, clerk.

Afterwards, to wit, on the twenty-fifth day of August, 1884, came the defendant, by his attorney, and filed in said clerk's office his appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance.

In the circuit court of the United States of America for the northern district of Illinois.

JOHN V. FARWELL, ET AL.
vs.
JESSE SPALDING, COLLECTOR, &c. } Assumpsit.

The appearance of the defendant is hereby entered in this cause by his attorney.

RICHARD S. TUTHILL,
United States Attorney.

(Endorsed:) Filed Aug. 25th, 1884. Wm. H. Bradley, clerk.

6 Afterwards, to wit, on the twenty-second day of September, 1884, came the plaintiffs, by their attorney, and filed in said clerk's office their declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss.:

In the United States circuit court for the northern district of Illinois, to the October term, 1884.

John V. Farwell, Charles B. Farwell, and John K. Harmon, copartners doing business under the firm name and style of John V. Farwell & Co., plaintiffs in this suit (which is a suit arising under the revenue laws of the United States, and is brought to recover duties claimed by the plaintiffs to have been illegally exacted of them and by them paid under protest) by Percy L. Shuman, their attorney, complain of Jesse

Spalding, collector of customs for the port and district of Chicago, defendant herein, who was summoned, etc., of a plea of trespass on the case on promises.

For that whereas the said plaintiffs heretofore, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and eighty-three, at, to wit, the northern district of Illinois, made payment to the said defendant, collector as aforesaid, of a certain large sum of
7 money, to wit, the sum of four hundred and four dollars, and nine cents, lawful money of the United States, as duties, under protest and in order to obtain possession of certain merchandise imported into the United States for them, the said plaintiffs, entered for consumption at the custom-house at the port of Chicago, in the district aforesaid, under the charge and control of the said defendant as such collector; and the said plaintiffs aver that said sum of money above specified, so paid to the said defendant as aforesaid, as duties as aforesaid, was in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant collector, illegally demanded and exacted of and from the said plaintiffs; and the said plaintiffs aver that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid by the proper officers of the customs they, the said plaintiffs, being dissatisfied with the decisions of the said collector, gave notice in writing to the said defendant as collector, setting forth therein distinctly and specifically the ground of their, the said plaintiffs', objection thereto, and that within thirty days after the date of the said ascertainment and liquidation as aforesaid, the plaintiffs appealed to the Secretary of the Treasury of the United States.

And the said plaintiffs aver that the decisions of the said Secretary
8 of the Treasury has been had on said appeals and that this suit has been brought within ninety days after the decisions of the said Secretary of the Treasury on such appeals.

By means whereof, and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiffs the sum of four hundred and four dollars and nine cents, lawul money as aforesaid, so illegally demanded of, and under protest paid by, the said plaintiffs as aforesaid, and being so liable, the said defendant, afterwards, to wit, on the day and year and at the district aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiffs well and truly to pay to the said plaintiffs the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas also the said defendant afterwards, to wit, on the same day and year, and at the place last aforesaid, became and was indebted to the said plaintiffs in the further sum of one thousand dollars, like lawful money as aforesaid, for money by the said defendant before that time had and received to and for the use of the said plaintiffs, and being so indebted, the said defendant afterwards, to wit, on the day and year and at the district last aforesaid, in consideration thereof, undertook and
9 then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned whenever the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested, etc.) has not paid the said several sums of money above specified, or any or either of them, or any part thereof, to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs the said defendant hath hitherto wholly neglected and refuse, and still does so neglect and refuse, to the damage of the said plaintiffs in the sum of one thousand dollars, and therefor the said plaintiffs bring their suit, &c.

PERCY L. SHUMAN,
Plaintiffs' Attorney.

(Endorsed:) Filed Sept. 22, 1884. Wm. H. Bradley, clerk.

Afterwards, to wit, on the sixth day of October, 1884, came the defendant, by his attorney, and filed in said clerk's office his plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In the circuit court of the United States of America for the northern district of Illinois, October term, 1884.

10 JESSE SPALDING, COLLECTOR, &C., *als.* JOHN V. FARWELL ET AL. } Assumpsit.

And the said Jesse Spalding, defendant, by Richard S. Tuthill (United States attorney for this district), his attorney, comes and defends, etc., when, etc., and says that he did not undertake or promise in manner and form as the said plaintiffs have above thereof complained against him, and of this the said defendant puts himself upon the country, etc.

RICHARD S. TUTHILL,
U. S. Attorney, for Defendant.

(Endorsed;) Filed Oct. 6th, 1884. Wm. H. Bradley, clerk.

Afterwards, to wit, on the ninth day of March, in the adjourned March term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JOHN V. FARWELL ET AL. *vs.* JESSE SPALDING, COLLECTOR, &C. } Assumpsit.

11 Now come the plaintiffs, by their attorney, and the defendant, by the district attorney, and upon issue joined herein by agreement they waive the intervention of a jury, and for trial put themselves upon the court, and, after hearing the evidence, the court takes this cause under advisement.

Afterwards, to wit, on the first day of June, 1885, there was filed in said clerk's office the special finding of the court in said above-entitled cause, which said special finding is in the words and figures following, to wit:

Special finding.

U. S. circuit court, nor. district of Illinois.

JOHN V. FARWELL ET AL.
vs.
JESSE SPALDING, COL'R, &C.

The court finds the facts to be as follows: On March 15, 1883, the pl'ffs imported the goods in question, via the port of New York, and, on said date they were transported under immediate transportation entry to the port of Chicago, where they arrived and were deposited under bond in bonded warehouse on March 29, 1883. Said goods were withdrawn for consumption by the pl'ffs on the 19th of March, 1884, when def't assessed an additional duty of 10 per cent. on the amount of duties and charges on said goods, under section 2970 of the Revised Statutes
12 of the United States, on the ground that they had not been withdrawn within a year from the date of original importation.

H. W. BLODGETT,
Judge.

(Endorsed:) Filed June 1, 1885. Wm. H. Bradley, clerk.

13 On the same day, to wit, on the first day of June, in the adjourned May term of said court, 1885, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

JOHN V. FARWELL, CHARLES B. FARWELL, and John K. Harmon
vs.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago.
} Assumpsit.

Now come the parties, by their attorneys, and the court having considered and being now fully advised upon the matters heretofore submitted herein, finds the issue for the plaintiffs, and assesses their damages at four hundred and four dollars and nine cents, with interest and costs.

It is thereupon considered and adjudged by the court that the plaintiffs do have and recover of the defendant the said sum of four hundred and four dollars and nine cents, their damages, with interest thereon from the time the same was paid to the defendant, together with their costs herein, amounting to twenty-three dollars and forty-six cents, and that they have execution therefor.

14 Afterwards, to wit, on the fifteenth day of June, in the adjourned May term of said court, 1885, in the record of proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

JOHN V. FARWELL ET AL.
v.
JESSE SPALDING, COLLECTOR OF CUSTOMS FOR the port and district of Chicago. } Assumpsit.

Now comes the said defendant, by the district attorney, and on his motion it is certified by the court that there was probable cause for the acts done by said defendant, as complained herein.

15 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit of the United States for said northern district of Illinois, do hereby certify the above and foregoing to a true and complete transcript of the record of all the proceedings had in said court in the cause wherein John V. Farwell, Charles B. Farwell, and John K. Harmon are the plaintiffs, and Jesse Spalding, collector of customs for the port and district of Chicago, is the defendant, as the same appear from the files and records of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this eleventh day of February, 1886.

[SEAL.] WM. H. BRADLEY,
Clerk.

16 THE UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The United States of America to the judges of the circuit court of the United States, for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between John V. Farwell, Charles B. Farwell, and John K. Harmon, copartners, &c., plaintiffs, and Jesse Spalding, collector of customs, &c., defendant, in an action of assumpsit, a manifest error hath happened, to the damage of the said Jesse Spalding, collector of customs, &c., defendant, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1886, in the Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further

to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this 21st day of January, in the year of our Lord one thousand eight hundred and eight-six, and of the Independence of the United States the 110th year.

[SEAL.] WM. H. BRADLEY,
Clerk of the U. S. Circuit Court, Nor. Dist. of Illinois.

(Indorsed:) Supreme Court of the United States. Jesse Spalding, collector of customs, &c., plaintiff in error, vs. John V. Farwell et al., defendants in error. Writ of error. Copy deposited for the defendant in error in the clerk's office U. S., northern district of Illinois.

17 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To John V. Farwell, Charles B. Farwell, and John K. Harmon, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on, the second Monday of October, A. D. 18 , pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Jesse Spalding is plaintiff in error, to show cause, if any there be, why the errors mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. H. W. Blodgett, district judge presiding in circuit court this 18th day of March, in the year of our Lord one thousand eight hundred and eighty-six.

H. W. BLODGETT,
Judge.

I hereby accept service of the within citation.

P. L. SHUMAN,
Plaintiff's' Attorney.

CHICAGO, *March* 22, 1886.

(Indorsed:) 19182. Supreme Court of the United States. Jesse Spalding vs. Jno. V. Farwell, et al. Citation to October term, A. D. 18 .

(Indorsement on cover:) No. 284. Jesse Spalding, collector of customs for the port and district of Chicago, plaintiff in error, vs. John V. Farwell, Charles B. Farwell, and John K. Harmon, copartners as John V. Farwell & Company. N. Illinois, C. C. U. S. Filed June 8, 1886.

JAMES H. McKENNEY

In the Supreme Court of the United States.

OCTOBER TERM, 1882.

JESSE SPALDING, COLLECTOR, ETC., plaintiff in error,
vs.
JOHN V. FARWELL AND OTHERS. } No. 284.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

WM. A. MAURY,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1888.

JESSE SPALDING, COLLECTOR, ETC., plaintiff in error,
vs.
JOHN V. FARWELL AND OTHERS. } No. 284.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE PLAINTIFF IN ERROR.

This is an action to recover back the additional duty of 10 per cent. on an importation of goods held by the collector not to have been withdrawn from warehouse for consumption within one year from the date of "original importation."

The facts, as found by the court, are that on the 15th March, 1883, the goods were imported, via the port of New York, and on the same day were transported, under an immediate transporta-

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tion entry, to the port of Chicago, where they arrived and were deposited in bond in a bonded warehouse on 29th March, 1883, and on 19th March, 1884, the goods were withdrawn for consumption by the plaintiffs, when the collector assessed an additional duty of 10 per cent., under section 2970, Revised Statutes, on the ground that they had not been withdrawn "within one year from the date of original importation" (p. 6).

The whole matter of law and fact was by stipulation referred to the court (p. 5), and the court found the facts as above and entered judgment for the amount claimed (p. 6). (See opinion of court in Appendix, A.)

ASSIGNMENT OF ERROR.

The judgment, it is respectfully submitted, is erroneous, for that it should have been for the defendant on the finding of the court.

ARGUMENT.

The question in the case, as seen, arises upon section 2970, Revised Statutes, which is in these words:

> Any merchandise deposited in bond in any public or private bonded warehouse may be withdrawn for consumption within

one year from the date of original importation on payment of the duties and charges to which it may be subject by law at the time of such withdrawal; and after the expiration of one year from the date of original importation, and until the expiration of three years from such date, any merchandise in bond may be withdrawn for consumption on payment of the duties assessed on the original entry and charges, and an additional duty of ten per centum of the amount of such duties and charges.

Was "the date of *original importation*" the 15th March, 1883, when the goods were entered at the port of New York for immediate transportation, or the 19th March, 1883, when the goods were entered for warehouse at the port of Chicago? If the former, the duty of 10 per cent. was duly assessed; if the latter, the plaintiff below should prevail, and the judgment be affirmed.

What did Congress mean by the words "*original importation?*" Why was the adjective "*original*" used unless to distinguish the port where the merchandise was first brought in from the *interior port*, its ultimate destination?

Was the port of New York any the less the port of "original importation" because the merchandise was not detained there for appraisal and liquidation of duties?

Where is the harm that is done the importer at the interior port by taking the date of impor-

tation at the first port as the point from which to reckon the limitation of a year? In what respect does it matter that the merchandise was in a movable bonded warehouse for a few days? Does this way of computing the time operate as an injurious discrimination against the interior importer, as has been said? So far from it, there is no conceivable way in which the interior importer can be prejudiced.

As imported goods are sold by sample or by invoice, non-access to them for the brief period of transit from the port where they enter the country to that of ultimate destination can work no prejudice to the importer.

Can it be said in any just sense that the port of arrival in such cases is not the port of "original importation," because there is no appraisal and no liquidation of duties at such port?

Looking at the plain words of the statute, it would seem too clear for discussion that Congress used the adjective "original" for the one purpose of indicating the port of arrival and distinguishing it from the interior port of destination or final entry.

Looking, now, at the immediate transportation act of 10th June, 1880 (21 Stat., 173), we find that the landing of merchandise at the port of arrival is termed an importation in cases where the merchandise is entered for transportation to an interior port. Section 4 directs that "all invoices of merchandise *imported* from any foreign country and *intended to be* transported" shall be made in quadruplicate, and section 5 declares how merchandise "imported" in large packages may be transported to the interior port of destination by express companies; see also sections 2990 and 2991 Revised Statutes, repealed by the act of 1880, which designated as *importation* the introduction of merchandise at the port of arrival although intended for transportation.

As supporting the view here contended for, we call the attention of the court to several rulings of the Treasury on the question under discussion (see Appendix, B, C, D).

Reasoning from notions of convenience or fitness, where the language is plain, is, almost necessarily, fallacious in interpreting an arbitrary system of legislation like the tariff. Congress

has said plainly that goods kept in bond for more than a year after their arrival in the country must pay an additional duty of 10 per cent., and the will of Congress must be carried out, but the interpretation adopted by the court below ignores the adjective "original," and gratuitously assumes *that Congress did not use that word in any sense at all.*

Here, then, is a violation of the settled rule of interpretation, that every word used in a statute must have a meaning, if possible, for the purpose of reaching a conclusion that is prejudicial to the revenue.

We submit that the judgment should be reversed.

WM. A. MAURY,
Assistant Attorney-General.

APPENDIX.

A.

FARWELL and others *v.* SPALDING.

(*Circuit Court, N. D. Illinois.* May 26, 1885.)

CUSTOMS DUTIES—ADDITIONAL DUTY ON GOODS IN WAREHOUSE MORE THAN ONE YEAR—DATE OF ORIGINAL IMPORTATION.

Held, that as to goods which have been transported from an exterior port on first arrival to an interior port of transportation, the words "date of original importation" (section 2970 Rev. St.) mean the date of arrival of the goods at the interior port of destination.

At Law.

Percy L. Shuman and *Jo. H. Defrees, jr.*, for plaintiff.

Chester M. Dawes, Asst. U. S. Atty., for defendant.

BLODGETT, J. (*orally*). The plaintiff in this case imported a quantity of goods by way of the port of New York, from whence they came under bond to the port of Chicago, and within a year after their arrival in Chicago, but more than a year after their arrival at the Atlantic port, plaintiffs offered to pay the duties and charges, but the customs officers here assessed an additional duty of 10 per cent. on the amount of duties and charges due thereon. (Heyl, pt. 1, p. 57, § 2970.) The plaintiff paid this added duty under protest, and now brings suit to recover the same.

The law under which it was claimed this additional duty had been incurred reads as follows:

"Sec. 2970. Any merchandise deposited in bond in any public or private bonded warehouse may be withdrawn for consumption

within one year from the date of original importation, on payment of the duties and charges to which it may be subject by law at the time of such withdrawal; and after the expiration of one year from the date of original importation, and until the expiration of three years from such a date, any merchandise in bond may be withdrawn for consumption, on payment of the duties assessed on the original entry, and charges, *and an additional duty of* 10 *per centum on the amount of such duties* and charges."

The only question in this case is, when does the year begin to run as to goods transported from an exterior to an interior port, and warehoused in bond at the interior port? Does it begin to run from the date of the arrival of the goods at the exterior or interior port? The statute says, "within one year from the date of original importation." A careful examination of the legislation by Congress, out of which has been developed our present system of transporting goods in bond from their port of first arrival to their interior port of destination, and there allowing them to be warehoused, satisfies me that it was the intention of Congress to place importers at the interior ports upon the same footing, and give them the same time for the payment of their duties, as is allowed to importers at exterior ports; and that, as to goods which have been transported from an exterior port of first arrival to an interior port of destination, the words "date of original importation," as used in this section, mean the date of the arrival of the goods at the interior port of destination. It therefore seems to me that, inasmuch as the importer in this case offered to pay the duties and charges upon the goods in question within one year from the time the goods arrived at Chicago and were warehoused there, the additional 10 per cent. was improperly and illegally imposed upon them.

The issue is found for the plaintiff.

B.

(5633.)

Date of importation of goods shipped under immediate-transportation bonds.

TREASURY DEPARTMENT, *March* 30, 1883.

SIR: In reply to your letter of the 12th instant, requesting to be informed whether goods imported and entered at exterior ports before July 1, but which reached their destination under the immediate-transportation act after that date, will be subject to duty under the new tariff taking effect July 1, you are informed that the date of importation at the exterior port fixes the time which must determine the rate of duty. All dutiable goods, therefore, imported before the act takes effect, which are not in public store or bonded warehouse when it goes into operation, will be liable to duty under the present tariff.

Very respectfully,

H. F. FRENCH,
Acting Secretary.

SURVEYOR OF CUSTOMS,
Kansas City, Mo.

C.

(5749.)

Date of importation of goods entered for immediate transportation.

TREASURY DEPARTMENT, *June* 4, 1883.

SIR: The Department is in receipt of your letter of the 10th ultimo, in which you ask for instructions as to the proper date from which to compute the time within

which withdrawals for consumption or for exportation may be made for merchandise arriving at your port under immediate-transportation entries without appraisement.

In reply, you are informed that the ruling of March 30, 1883 (Synopsis, 5633), to which you refer, has the effect of fixing the date at which the goods arrive at the exterior port as the date of importation. This date should, therefore, control for all purposes, and previous decisions on the subject should be considered as modified accordingly.

Very respectfully,

H. F. FRENCH,
Acting Secretary.

COLLECTOR OF CUSTOMS,
New York.

D.

(6695.)

Amendment of Regulations—Date of importation of goods entered for immediate transportation.

TREASURY DEPARTMENT, *December* 23, 1884.

The first paragraph of article 705 of the Regulations of 1884 is hereby amended so as to read as follows:

Merchandise in bond may be withdrawn from warehouse for consumption in any quantity not less than an entire package, or if the merchandise be in bulk, one ton in weight, at any time within one year from the date of original importation, which in the case of merchandise entered for immediate importation, shall be the date of arrival at the exterior port, on payment of the duties and charges to which it may be subject by law at the time of such withdrawal, and thereafter at any time within three years from the date of the original importation or arrival as aforesaid, on payment of duties assessed on the liquidation of the original entry, an additional duty of 10 per centum of the amount of such duties, and the usual legal charges for storage. (Revised Statutes, 2970 and 2980; Synopsis, 5633 and 5749.)

It will be noted that the effect of this amendment is to fix the date of importation of merchandise transported under the immediate-transportation act of June 21, 1880, at the date of its first arrival in the United States at the exterior port, under and in pursuance of the decisions of March 30 and June 4, 1883. (Synopsis, 5633 and 5749.)

The other paragraphs of such article 705 will remain unchanged.

Very respectfully,

CHAS. E. COON,
Acting Secretary.

To COLLECTORS AND OTHER
OFFICERS OF THE CUSTOMS.

C

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 284.

JESSE SPALDING, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

JOHN V. FARWELL, CHARLES B. FARWELL, AND JOHN K. HARMON, COPARTNERS AS JOHN V. FARWELL & CO., DEFENDANTS IN ERROR.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

BRIEF FOR DEFENDANTS IN ERROR.

BRIEF OF ARGUMENT.

The defendants in error imported, at Chicago, on March 29, 1883, certain dutiable merchandise, which was on that day entered on a warehouse entry and deposited in a United States bonded warehouse, pursuant to the provisions of section 2962, Revised Statutes of the United States.

The goods in question were imported at Chicago under the sanction of what is known as the Immediate Transportation Acts, and Treasury regulations thereunder.

(1.) Secs. 2999–2997, Rev. Stats. of the U. S.

(2.) An act to amend the statutes in relation to immediate transportation of dutiable goods, and for other purposes, approved June 10, 1880. (Sup. to Rev. Stats., Vol. I, pp. 545, 546.)

(3.) General regulations under the Customs and Navigation Laws of the United States, 1884, articles 759 to 775, inclusive, pp. 315–325.

The date of the arrival of the goods in New York was March 15, 1883, at which time they were transferred from the ocean vessel, under the supervision of the customs officers at New York, to cars of a bonded railway company, and were immediately forwarded to the port of destination (Chicago) without examination and appraisement, as provided by law.

As stated above, upon their arrival in Chicago, March 29, 1883, they were duly entered for warehouse, and a warehouse bond was executed, conditioned as follows:

"* * * that if within one year from the said date of original importation [March 29, 1883] the said goods, wares, and merchandise shall be regularly and lawfully withdrawn from public store or bonded warehouse on payment of the legal duties and charges to which they shall then be subject; or if, after the expiration of one year and within three years from the said date of original importation, they shall be so withdrawn upon like payment, with 10 per cent. added upon the amount of such duties and charges * * *, then this obligation to be void; otherwise to remain in full

force." (*Sec.* 2970, *Rev. Stats. U.S.; Treasury Regulations* 1884, *art.* 671.)

The goods remained in warehouse at Chicago, under the bond above referred to, until March 19, 1884, which was one year and four days after their arrival at New York and *ten days less than a year* from the date of their arrival and entry at Chicago.

The importers (defendants in error) withdrew the goods from bond on March 19, 1884, upon an entry for consumption, and were compelled to pay to the collector 10 per cent., in addition to the legal duties and charges, in order to obtain possession of the goods.

Against this exaction the defendants in error protested and appealed, as required by law (sec. 2931, Rev. Stat. U. S.), and their appeal having been decided by the Secretary of the Treasury, they brought suit for the recovery of the 10 per cent. so paid, amounting to four hundred and four dollars and nine cents, with interest thereon from date of payment.

A trial was had before Blodgett, J., without a jury, a jury having been waived, and the court rendered a special finding (Rec., p. 6); also a general finding and judgment.

The question of law involved in this case has been the subject of an opinion of the Attorney General and of the Secretary of the Treasury, but is believed to be before this Court for the first time.

The position of the Treasury Department is that the date of the arrival at the seaboard port of goods intended for immediate transportation without appraisement is the date of original importation, and the defendants in error submit that the manifest intention of Congress in establishing in-

terior ports of entry and giving them all the privileges of the seaboard ports was to continue the voyage of importation without interruption from the foreign port to the port of destination, merely making provision for the transfer of cargo *en route* at the port where the ocean steamer landed and the railway train took up the journey inland. Hence they claim that the date of arrival at the seaboard of such goods as are immediately forwarded under immediate transportation entry is only incidental to the business of transferring, and that the date of arrival at the port of destination, as shown by the invoices, manifests, and bills of lading, is the date of original importation. It follows that the place of original importation is the place where the goods come into the possession of the importer through the medium of the custom-house entries and where the duties are paid or secured to be paid by the importer. It is when the goods go into warehouse for the first time.

Section 2970 of the Revised Statutes provides that—

"Any merchandise deposited in bond in any public or private bonded warehouse may be withdrawn for consumption *within one year* from the date of original importation, on payment of the duties and charges to which it may be subject by law at the time of such withdrawal, and *after the expiration of one year* from the date of original importation, and until the expiration of three years from such date, any merchandise in bond may be withdrawn for consumption *on payment of the duties assessed on the original entry and charges and an additional duty of ten per centum of the amount of such duties and charges.*"

It is under this section of the statute that these goods were permitted to remain in warehouse.

The only question in the case is whether these goods remained in warehouse more than one year from the date of original importation.

There are three expressions commonly used to designate ports as regards the landing and entry of merchandise. These expressions are (1) port of arrival, (2) port of final destination, and (3) port of original importation.

Prior to the enactment of the immediate transportation law all ports of entry or original importation were at the seaboard. All duties upon imported merchandise were required to be paid or secured to be paid by the importers or consignees at the port of entry, where goods were landed from the ocean vessel. Up to the time of the passage of the immediate transportation act the term "port of final destination" had no significance beyond describing the port at which the ocean voyage terminated; but upon the passage of this law, in 1870, a number of inland cities named in the first section of the law were at once designated as "ports of final destination," and were thus distinguished from "ports of first arrival" in speaking of the importation of goods at these interior cities—*e. g.*, Chicago, St. Louis, Kansas City, Milwaukee, St. Paul, and other inland cities are *ports of final destination*, and New York, Boston, Philadelphia, &c., are *ports of first arrival.*

The other expression, "port of original importation," has reference purely to the administration of the customs service, and has always applied to the port at which the entry for warehouse or consumption was required to be made and the duties paid or secured to be paid.

Upon this point we refer to that portion of the opinion of Judge Blodgett, reported in XXIV Federal Reporter, at page 18, in which he says:

"The only question in this case is, When does the year begin to run as to goods transported from an exterior to an interior port and warehoused in bond at the interior port? Does it begin to run from the date of the arrival of the goods at the exterior or interior port? The statute says 'within one year from the date of original importation.' A careful examination of the legislation by Congress out of which has been developed our present system of transporting goods in bond from their *port of first arrival* to their interior *port of destination* and there allowing them to be warehoused, satisfies me that it was the intention of Congress to place importers at the interior ports upon the same footing and give them the same time for the payment of their duties as is allowed to importers at exterior ports, and that as to goods which have been transported from an exterior *port of first arrival* to an interior *port of destination* the words 'date of original importation,' as used in this section, mean the date of the arrival of the goods at the interior port of destination."

We beg to refer the Court to an opinion of the learned Attorney General of the United States upon the question as to whether, under the 5th section of the act of March 3, 1875 (Stat. at Large, Vol. XVIII, p. 316), merchandise which arrived at New York from a foreign port prior to March 3, 1875, but which arrived at an interior port under *an immediate transportation bond, without appraisement*, after that date is, by virtue of the provisions of the above-named section, exempt from liability to the increased duty imposed by that act. 15 Op., p. 7.

"IN SUCH CASE THE MERCHANDISE IS TO BE REGARDED UNDER THAT SECTION THE SAME AS IF THE SHIP IN WHICH IT REACHED THE PORT OF FIRST ARRIVAL HAD CONTINUED HER VOYAGE TO THE PORT OF FINAL DESTINATION."

Digest of Op. Att'ys Gen., p. 175.

The attention of this Court is respectfully directed to the fact that the immediate transportation law has undergone certain modifications since the original act was passed, and these modifications are indicative of the intention of Congress to "place the importers at the interior ports upon the same footing" as the importers at the seabord ports.

The principal change in the law is observable by comparing section 2990, Revised Statutes (act of July 14, 1870, sec. 1), with the first section of the act of June 10, 1880), (Stat. at Large, Vol. 21, p. 545).

The following are the parts of the sections referred to showing the changes:

"When any merchandise * * * shall appear, by the invoice or bill of lading and by the manifest, to be consigned to and destined for either of the ports specified in sec. 2997, the collector at the *port of arrival* shall permit the owner, agent, or consignee to make entry thereof for warehouse or immediate transportation, in triplicate, setting forth the particulars in such entry and the route by which such merchandise is to be forwarded, whether by land or water." * * * (*Sec.* 2990 *Rev. Stats.*)

"That when any merchandise * * * shall appear, by the invoice or bill of lading and manifest of the importing vessel, to be consigned to and destined for either of the ports specified in the seventh section of this act, the collector at the *port of arrival* shall allow the said merchandise to be shipped immediately after the entry prescribed in section two of this act has been made.

"That the collector at the port of first arrival shall retain in his office a permanent record of such merchandise *so to be forwarded to the port of destination*, and such record shall consist of a copy of the invoice and an entry whereon the duties shall be estimated as closely as possible on the merchandise so shipped; but no oaths shall be required on said entry." (*Act June* 10, 1880, *secs.* 1 *and* 2.)

During the ten years from 1870 to 1880 the attitude of the Treasury Department in administering this remedial law may be gathered from the decisions as published in the Synopsis of Decisions of the Secretary of the Treasury during those years. These decisions show that the importers

at the interior ports raised the question in 1875 as to whether, under the immediate transportation sections of the Revised Statutes (2990–2997), the allowance for damage received during the voyage could be claimed, ascertained, and allowed at the port of destination, in view of the provisions of section 2927, Revised Statutes. The opinion of the Attorney General was requested by the Secretary of the Treasury, and the Attorney General says:

"I am clear, * * * that the computation of '*ten days*' is to be made from the landing of the merchandise at the *last port.*"

Section 2927 prohibits any allowance for damage on merchandise that has been entered "unless proof to ascertain such damage shall be lodged in the custom-house of the port where such merchandise has been landed *within ten days* after the landing of such merchandise."

The Attorney General says:

"The words 'after the landing of such merchandise' must be taken to mean after the landing at the *port of destination.*" (Synopsis of Decisions Treasury Department, 1875, No. 2339, p. 247.)

It has been held that the importation of foreign goods is not complete as long as the goods remain in the custody of the officers of the customs.

United States *vs.* Bingan, 2 Clifford, 512.

When merchandise is taken from an ocean vessel at the port of first arrival, to be forwarded to a port of destination without examination and appraisement, it "shall be transferred, under proper supervision, directly from the importing vessel to the car, vessel, or vehicle in which the same is

to be transported to its final destination" (act June 10, 1880, sec. 6). "It shall be transported by common carriers to be designated for this purpose by the Secretary of the Treasury, and to and by none others." (*Ibid.*, sec. 3.)

"Such merchandise shall be conveyed in cars, vessels, or vehicles securely fastened with locks or seals, under the exclusive control of officers of the customs." (*Ibid.*, sec. 5.)

The penalty of the bond required to be given to the Government by common carriers under this law is not more than $500,000 nor less than $250,000.

Treasury Regulations 1884, art. 769.

Each common carrier is required to appoint persons by power of attorney, at the ports of first arrival named in the law, to receipt for the merchandise to be transported to ports of final destination.

Ibid., art. 769.

From the time the goods leave the ocean vessel till they arrive at their destination they remain in the absolute control of the customs officers and in the custody of the Government.

The manifest intention of Congress was, as shown in the law, to continue the voyage of importation to the port of destination, and there to permit of their entry for the first time, thus constituting the port of destination the port of original importation.

PERCY L. SHUMAM,
For Defendants in Error.